

REMARKS

The Official Action of May 28, 2008, and the prior art relied upon therein have been carefully reviewed. The claims in the application are now withdrawn claims 1-14 and elected claims 15-17 and 19-26, and also including new claim 28, and these claims define patentable subject matter warranting their allowance. The applicants respectfully request favorable reconsideration and allowance.

Applicants again respectfully request the examiner to acknowledge receipt of applicants' papers filed under Section 119.

Claims 17, 21, 23 and 24 have been rejected under the second paragraph of Section 112. The rejection is respectfully traversed.

According to the rejection, the term "derivative" makes it impossible to comprehend the scope of the claims. Applicants respectfully disagree as rosin derivatives are **defined** in applicants' specification at page 3, lines 11-13. Nevertheless, in deference to the examiner's views, the definition has been incorporated into claim 17 from claim 18. No limitations are made or are intended.

Withdrawal of the rejection is in order and is respectfully requested.

Some additional amendments have been introduced into the claims. Thus, claim 15 is amended to specify that the pesticidal composition is an EC or EW formulation, support being found at page 7, lines 26 and 27 of applicants' specification.

In addition, new claim 28 has been added, support being found at page 4, line 1, of applicants' specification. Claim 28 is patentable for at least the same reasons as claim 15 from which it ultimately depends, and for other reasons which will be apparent from the remarks appearing below.

Claims 15, 16, 20 and 22 have been rejected as anticipated by Aven WO 00/18227 (Aven). This rejection is respectfully traversed.

First, Aven is exclusively directed to non-aqueous stable suspension concentrate (SC) formulations as expressed throughout the Aven disclosure, e.g. page 1, lines 3-5; and page 2, lines 8-16 and 28-32. As the examiner certainly knows, SC formulations (e.g. as per Aven) are fundamentally different from EC and EW formulations, which are the type of compositions of the present invention. Thus, the present

application describes and applicants' claims call for a liquid pesticidal composition containing a sufficient quantity of the lactate ester to function as a crystal inhibiting agent. The examiner is correct to the extent of stating (about the middle of page 2 of the Office Action) that the lactate ester would serve as solvent. Indeed, the active compound is dissolved in the lactate ester. Thus, the present invention is clearly directed to emulsifiable concentrate (EC) formulations, which are initially free of water (see example 3) but which form an aqueous micelle emulsion upon dilution with water at the site of application, and emulsion-in-water (EW) formations.

Thus, the presently claimed compositions, being EC and EW, completely differ from the compositions of the SC type described by Aven. It is well-known that emulsions dissolve active compounds, and hence require crystal growth inhibitors to remain stable toward crystal growth, while SC formulations (e.g. Aven) contain solid particles of an active compound, i.e. the solid active compound is not dissolved. Please note applicants' examples 1-4, which exemplify such formulations of the EC/EW type, contrary to Aven's SC formulations.

It is important to understand that a requirement for formulating the active ingredients of the present application in the form of EW/EC compositions is their partial solubility in lactate esters (not in water), which lactate esters inhibit

the growth of crystals on standing. As the formulations are fundamentally different, the rejection should be withdrawn.

The rejection states at the top of page 4 that there is an overlap in the weight ratios of pesticide to lactate ester (this is certainly not the case with respect to new claim 28, the preferred ratio range of which is set forth at the top of page 4 of applicants' specification). However, the overlap of broader weight ratio as set forth in rejected claim 22 is irrelevant because it ignores the presence of other components as required by Aven, and also because it ignores the fact that Aven requires that the solvent (c), which may be a lactate ester, is capable of dissolving the active compound (a) only in an amount less than 5g/L, i.e. the solubility of the active compound in the water immiscible organic solvent is very low (page 3, lines 10-13; page 12, lines 4-10). As stated at page 9, lines 23 and 24:

The solvent (c) is suitably a water immiscible solvent in which the solubility of the crop protection compound (a) is less than 5g/L.

It follows that to the extent that the active crop protection compound (a) is dissolved in the SC formulation of Aven (and presumably it dissolves very little), it must be dissolved in one or more of the other required components, e.g. the adjuvants and/or dispersants (d) and (e). This is in stark

contrast to applicants' claimed subject matter in which the active compounds are dissolved.

As to the weight ratio range of claim 22 which overlaps with the Aven range, it must be understood that in those cases the active compounds of the present invention are those which are readily soluble in the lactate, contrary to Aven.

Respectfully, the rejection is not justified. Aven does not anticipate any of applicants' claims. Withdrawal of the rejection is in order and is respectfully requested.

Claims 15, 16, 19, 20 and 22 have been rejected as obvious under Section 103 from Aven. This rejection, which applicants' respectfully submit is inconsistent (except with respect to claim 19) with rejection under Section 102, is respectfully traversed.¹

As already noted above, a critical difference between the present invention and Aven is that the SC compositions cannot crystallize, and so Aven could not teach preventing crystallization of an active compound. In this respect, please note that any person skilled in the art knows that preventing crystallization in the compositions of the SC type described

¹ Section 103 applied only when Section 102 does not apply, noting the express language of Section 103. Therefore, the rejections are inconsistent.

and claimed in Aven is pointless. The lactate esters mentioned by Aven are used merely as water immiscible organic solvents in preparation of the SC compositions. However, it has been surprisingly found by the applicants that lactate esters (being solvents, as the Examiner correctly noted), previously used as water-immiscible solvents in SC formulations, can be successfully used as co-solvents (crystal growth inhibitors) in EC/EW formulations in order to prevent crystallization of active compounds on standing (see page 1, paragraph 13).

In fact, Aven teaches away from the present invention in suggesting the use of lactate esters as water immiscible solvents, in which the crop protection compound is hardly soluble (page 9, lines 23-27). Thus, it is respectfully maintained that claims 15, 16, 19, 20 and 22 are not obvious from Aven.

Withdrawal of the rejection is in order and is respectfully requested.

Claims 15-25 have been rejected as obvious under Section 103 from Aven in view of Lichti et al USP 5,403,813, (Lichti). This rejection, also partly inconsistent with previous rejections for the reasons pointed out above, is also respectfully traversed.

Applicants have never claimed to be the inventors of lactate esters and rosin derivatives, or even the use of rosin derivatives in biocide compositions. Thus, both lactate esters and rosin derivatives have been well known in the literature for a long time. However, it has now been surprisingly found by the applicants that certain combinations of lactate esters and rosin derivatives (at specific ratios, as disclosed in the present application) can successfully prevent crystallization of active compounds in EC/EW type formulations (please see page 1, paragraph 13). Since neither Aven, nor Lichti teaches of the EC/EW formulations, and hence they are not concerned of the problem preventing crystallization in such formulations, one ordinary skilled in the art, practicing the teachings of Aven and Lichti, wouldn't be motivated to combine lactate esters and Rosin derivatives at certain ratios in said formulations, and there would be no reason for doing so.

In short, Licthi does not make up for the deficiencies of Aven as pointed out above with respect to even claim 15, let alone the claims which depend therefrom and thus incorporate the subject matte of claim 15, and this is so even if the proposed combination were obvious (respectfully not admitted).

Withdrawal of the rejection is in order and is respectfully requested.


The prior art documents of record and not relied upon by the PTO have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently material to warrant their application against any of applicants' claims.

Applicants believe that all issues raised in the Official Action have been addressed above in a manner that should lead to patentability of the present application. Favorable consideration and early formal allowance are respectfully requested.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By



Sheridan Neimark
Registration No. 20,520

SN:jnj
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
G:\BN\M\MAKH\SASSON3\PTO\2008-8-28AMDPTFRM.doc